the *Adams* case is not applicable to the state of facts then before it, presumptively because the question was raised in an ancillary proceeding and not during the progress of the trial. In the *Gouled* case the court holds that the fact that the defendant did not know of the unlawful seizure till the evidence was offered on the trial excused him from raising the question in some ancillary proceeding, which in the *Weeks* case seems to have been regarded as necessary.

But the cure for all our troubles over this question lies in the rule announced in the latter part of the opinion in the *Gouled* case. The court is discussing the application of the rule, or alleged rule, that illegality in securing evidence does not affect its admissibility. The court says:

> "We think, * * * that it is a rule to be used to secure the ends of justice under the circumstances of each case; and where, in the progress of a trial, it becomes probable that there has been an unconstitutional seizure of papers, it is the duty of the trial court to entertain an objection to their admission, or a motion for their exclusion, and to consider and decide the question as then presented, even where a motion to return the papers may have been denied before trial. A rule of practice must not be allowed, for any technical reason, to prevail over a constitutional right."

Verily, the line between what is legal and what is equitable is being lost in a not too unwelcome haze. The world moves and the legal section of it is catching on. It matters little what was said in Doe's or Roe's case. It matters not so much "what is the rule"; the concern rather is "what does the cause of justice call for." There is little danger yet, however, that the boast that ours is a government by law will become an idle one.

V. H. L.

THE USEFULNESS OF INTERVENTION AS A REMEDY IN ATTACHMENT.—While rules of procedure are not saved from the rude hand of the reformer by the "due process" guarantees of our constitutions, they do rest, nevertheless, under the very efficient protection of professional conservatism. Such rules are looked upon by the bench and bar as their own special concern, and innovations in this field must maintain the burden of proving their character before both the lawyer members of the legislature and the lawyers and judges who interpret them in the course of litigation. It would be natural, therefore, to expect that a proposed reform in procedure would have to meet at least the possibility of two shrinking processes, one at the hands of the legislature and the other at the hands of the court. An interesting case of the latter kind is found in *Chase* v. *Washtenaw Circuit Judge,* (Mich., 1921), 183 N. W. 63.

In that case the petitioner, who claimed that her property had been wrongfully attached as the property of another sought to intervene in the attachment suit for the purpose of freeing it from the lien of the wrongful levy. The Michigan statute passed in 1915 (C. L. 1915, Sec. 12362) allowed an intervention in any action by anyone claiming an interest in the litiga-

tion. The court held that the "petitioner does not assert any interest in the litigation, and only seeks to free her property from a claimed wrongful attachment." Therefore, it was held that she could not intervene, but must let the attachment proceedings take their course against her property.

A contrary decision would have secured to the people of Michigan a much needed simplification of procedure and could have been justified on both reason and authority much more easily than the decision that was made. A study of contemporary American practice in such cases discloses the following interesting features.

In the first place, it appears that the widespread recognition of the great practical value of intervention in attachment cases has resulted in the enactment of a large number of statutes expressly providing for intervention by the owner of property claimed to have been wrongfully attached as the property of another. Even such conservative jurisdictions as Illinois (*Juillard & Co.* v. *May,* (1889), 130 Ill. 87); Mississippi (*Dreyfus* v. *Mayer,* (1891), 69 Miss. 282); Florida G. S., 1906, Sec. 2129); Georgia (CODE, 1911, Secs. 5115, 5116), and West Virginia (*Capehart's Ex'r* v. *Dowery,* (1877), 10 W. Va. 130), which have refused to accept any thoroughgoing reform in pleading and still adhere to the common law system, have, nevertheless, enacted statutes expressly authorizing such intervention in attachment cases. Kansas (*Bodwell* v. *Heaton,* (1888), 40 Kan. 36); Arkansas (S. & H. ST., 1894, Sec. 406), and Oklahoma (*Miller* v. *Campbell Commission Co.,* (1903), 13 Okla. 75), states usually more friendly to such reforms, have similar statutes.

In the next place, it appears that the value of such a remedy has appealed so strongly to a number of courts that they have, in the absence of any statute at all on the subject, authorized the practice as an exercise of their inherent power to regulate their own procedure. This was the case in *Sims* v. *Goettle,* (1880), 82 N. C. 268; in *United States* v. *Neely,* (1906), 146 Fed. 764, and in *Daniels* v. *Soloman,* (1897), 11 App. D. C. 163, the latter asserting the existence of a similar judicial attitude in Maryland. In the *Neely* case, *supra,* the court saw no difficulty in the matter at all, and approved the intervention on the simple ground that "in that way a decision can be reached much more quickly and economically than in any other."

Lastly, it appears that a large number of states have general statutes of intervention *substantially similar to the Michigan statute,* and the decisions of courts acting under these statutes have been almost unanimous in favor of allowing such an intervention in attachment cases. Such was the decision in each of the following cases: *Patton* v. *Madison Nat. Bank,* (1907), 126 Ky. 469; *City Nat. Bank.* v. *Crahan,* (1907), 135 Iowa, 230; *Hannon* v. *Connett,* (1897), 10 Col. App. 171; *Dennis* v. *Kolm,* (1900), 131 Cal. 91; *Potlach Lumber Co.* v. *Runkle,* (1909), 16 Ida. 192; *Field* v. *Harrison,* (1868), 20 La. Ann. 411; *Lee* v. *Bradlee,* (1820), 8 Mart. (La.) 20; *Houston Real Estate Inv. Co.* v. *Heckler,* (1914), 44 Utah, 64. The last case above cited contains a very thorough study of the question, and demonstrates the simplicity, directness and speed with which the conflicting claims to

attached property can be determined by this method. In two states alone, so far as we have discovered, Nebraska (*Dunker* v. *Jacobs,* (1907), 79 Neb. 435), and New Mexico (*Meyer & Sons Co.* v. *Black,* (1888), 4 N. Mex. 352), has this use of the remedy of intervention under general intervention statutes like that in Michigan been disapproved. E. R. S.

LIABILITY OF MASTER FOR NEGLIGENCE OF SERVANT RETURNING FROM PERSONAL ERRAND.—It is clearly established by a long and uniform line of decisions that a master is liable for the result of his servant's negligence when the servant is acting within the scope of his employment. See collection of the judicial statements of this rule in LABATT ON MASTER AND SERVANT, Vol. 6, pages 6695 to 6698. This rule is obviously founded on the great principle of social duty, that every man, in the management of his own affairs, whether by himself or by his agents or servants, shall so conduct them as not to injure another; and if he does not, and another thereby sustains damage, he shall answer for it. *Farwell* v. *Boston & W. R. Corp.,* 4 Met. (Mass.) 49, 55. It is not the rule itself, however, but its application, that gives rise to doubt in determining particular cases. The difficulty is in deciding when the servant is, and when he is not, acting within the scope of his employment, and it seems doubtful if any fixed formula could be worked out that would solve the question in all cases. With reference to establishing such a criterion of liability, it has been laid down that the servant's agency extends to doing everything reasonably necessary for the efficient performance of his master's business in the station to which his master has appointed him. *Cullimore* v. *Savage South Africa Company,* [1903], 2 I. R. 589. But such an attempt to establish a formula of liability cannot be of any great assistance in deciding cases, for it still leaves the question of reasonable necessity to be determined.

In a recent New York case, *Riley* v. *Standard Oil Co. of N. Y.,* (1921) 132 N. E. 97, a truck driver was ordered by the master to go from the mill to the freight yards for the purpose of loading some paint, and to return immediately. After loading the truck the driver found some waste pieces of wood which he loaded on the truck and carried to his sister's house, four blocks in the opposite direction. He started to return, on a course that would carry him past the freight yards, and before reaching the yards he negligently ran down the plaintiff. It was held, by a divided court, that the servant must be deemed on his master's business at some point in the return, which point, in view of all the circumstances, he had reached.

In an extremely forceful dissenting opinion Justice McLaughlin says, after speaking of the result reached by the majority of the court:

> "I am unable to see how this conclusion can be reached as a matter of law. Nor do I think the facts would justify a finding to this effect. The uncontradicted facts show, as it seems to me, that Million, at the place where and time when the accident occurred, was not acting for the defendant. * * * He was doing an independent act of his own, and outside the service for which he had been employed."